

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 124 of 1985

WITH

CRIMINAL APPEALS NOS.125 TO 128 OF 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

UNION OF INDIA

Versus

GAEKWAR MILLS CO.LTD

Appearance:

Shri S.C.Patel, Additional Standing Counsel for the Central Government, for the appellant (in all matters).

Shri K.D.Gandhi, Advocate, for Shri K.S.Nanavati, Advocate, for Respondents Nos. 1 to 8 (in all matters).

Shri M.A.Bukhari, Additional Public Prosecutor, for Respondent No.9 (in all matters).

CORAM : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

All these appeals are filed against separate orders of discharge passed by the learned Judicial Magistrate (First Class) at Gandevi in Criminal Cases Nos.2274 of 1983 to 2278 of 1983 discharging respondents Nos.2 to 8 herein from the offence punishable under Section 14 read with Section 14-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (the Act for brief). Common questions of law and fact are found arising in all these matters. I have therefore thought it fit to dispose of all these appeals by this common judgment of mine.

2. The facts giving rise to these appeals move in a narrow compass. Respondent No.1 herein is a company registered under the Companies Act, 1956 (the Company for convenience). Respondent No.2 herein was its Managing Director and respondents Nos.3 to 8 herein were its Directors at the relevant time. The Company was liable to deposit the provident fund contribution for its employees, family pension contribution, deposit link insurance scheme contribution, administrative charges and other dues under the Act. It appears that, for the period from May 1983 to July 1983, the Company made default in payment of these amounts to the concerned authority under the Act. Thereupon, a show cause notice was issued and thereafter the Company deposited the due amount with penal interest after the delay ranging between two to five months. Thereafter, the Provident Fund Inspector filed his complaint in the Court of the Judicial Magistrate (First Class) at Gandevi charging respondents Nos.1 to 8 herein with the offence punishable under Section 14 read with Section 14-A of the Act. Separate complaints were filed for separate dues payable under the Act. These complaints were registered as Criminal Cases Nos.2274 of 1983 to 2278 of 1983. It appears that on behalf of respondents Nos.2 to 8 herein a sort of written statement was filed mentioning therein the grounds of delay in making the due payments under the Act and it was also contended therein that respondents Nos.2 to 8 were not penal liable under the Act. It was taken on the record of the trial court as Exh.4 in each case. Later on, on behalf of respondents Nos. 2 to 8, an application for discharge was made on 9th July 1984 at Exh.10 on the record of each case. After hearing arguments, by the order passed therebelow on 25th July 1984, the learned Judicial Magistrate (First Class) at Gandevi discharged respondents Nos.2 to 8 from the

offence punishable under Section 14 read with Section 14-A of the Act. That aggrieved the provident fund authorities. The Union of India on their behalf has preferred all these appeals under Section 378 of the Code of Criminal Procedure, 1973 (the Code for brief) for questioning the correctness of the aforesaid orders of discharge.

3. Learned Additional Standing Counsel for the Central Government Shri Patel for the appellant has urged that the order of discharge cannot be sustained in law in view of the binding ruling of the Supreme Court in the case of SRIKANTA DATTA v. ENFORCEMENT OFFICER, MYSORE reported in AIR 1993 Supreme Court at page 1656. Learned Counsel Shri Patel has invited my attention to Form No.5-A filed by and on behalf of the Company under the Employees Provident Fund Scheme 1952 (the Scheme for convenience) at page 45 on the record of the Paper Book. In column 14 thereof is mentioned the name of respondent No.2 in each appeal as the Managing Director of the Company as the person in charge of and responsible for the conduct of the business of the Company. In that view of the matter, runs the submission of learned Counsel Shri Patel for the appellant, the learned trial Magistrate was not justified in discharging the concerned accused, more particularly accused No.2 (respondent No.2 in each appeal). Learned Additional Public Prosecutor Shri Bukhari for the State Government (respondent No.9 in each appeal) has adopted the submissions urged before me by learned Counsel Shri Patel for the appellant. As against this, learned Advocate Shri Gandhi for respondents Nos.1 to 8 in each appeal has submitted that the appeal in each order of discharge is not maintainable. Learned Advocate Shri Gandhi for respondents Nos.1 to 8 in each appeal has further submitted that the alleged default occurred in the middle of 1983 and the due amount has admittedly been paid up with interest including penal interest and it would not be desirable to reopen the case after passage of 13 years. In support of his aforesaid submission, he has relied on the binding ruling of the Supreme Court in the case of ADONI COTTON MILLS LTD. v. REGIONAL PROVIDENT FUND COMMISSIONER reported in 1995 Supp. (4) Supreme Court Cases at page 580.

4. It becomes clear from the material on record that the due amount under each head of contribution was paid by and on behalf of the Company with interest including penal interest after the delay ranging between two to five months from the due date of payment. Learned Advocate Shri Gandhi for respondents Nos.1 to 8 in each

appeal has submitted that the Company became a sick industrial unit and a reference was made to the Board of Industrial and Financial Restructure (the BIFR for convenience). In that view of the matter, it would all the more be desirable not to reopen the case as the management might have also undergone some change.

5. In the aforesaid ruling of the Supreme Court in the case of ADONI COTTON MILLS (supra), the Company failed to deposit the dues under the Act for a period of four months in 1976. The company did not pay up the dues and it agreed to pay and executed a bank guarantee for the purpose in the proceeding presumably before the Supreme Court. Its appeal before the Supreme Court was decided in May 1992. At that stage, more than 16 years had rolled by. The amount of default in that case was in the sum of Rs.90000/- approximately. Some two of the appellants had died during the pendency of the appeal before the Supreme Court. On the facts and in the circumstances of the case, the Supreme Court considered it not to be a fit case for further proceedings by way of prosecution.

6. I am bound by the aforesaid Supreme Court ruling. It will be applicable in the present case. The default in this case occurred some time in the middle of 1983. The due amount has already been paid up and the delay was in the range of two to five months from the due date of payment under each head. More than 13 years have rolled by since then. I am told that the matter is before the BIFR. It might frame a scheme for running the mill Company or it might think of allowing it to be wound up. Learned Advocate Shri Gandhi for respondents Nos.1 to 8 in each appeal has pleaded ignorance as to the final outcome with respect to the proceeding before the BIFR. In that view of the matter, no useful purpose will be served by allowing the dead horse to be whipped to life. Rightly or wrongly, the learned trial Magistrate has terminated the proceedings and it would be in the fitness of things to allow the matter to rest thereat for good.

7. In view of my aforesaid discussion, I do not think it will be necessary to decide the objection regarding the maintainability of appeal. It must frankly be stated that the appeal against the order of discharge would not be maintainable in view of the binding ruling of the Supreme Court in the case of MUNICIPAL CORPORATION OF DELHI v. GIRDHARILAL SAPURA reported in AIR 1981 Supreme Court at page 1169. That order would certainly be revisable under Section 397 of the Code. If I had thought of deciding the objection regarding

maintainability of appeal against the appellant, I would have acceded to the oral request made by learned Counsel Shri Patel for the appellant to convert each appeal into a revisional application under Section 397 of the Code. However, since I am taking the view that the burial, decent or otherwise, given to each case by the learned trial Magistrate need not be disturbed, I have not thought it fit to decide the objection regarding maintainability of the appeal in each case.

8. In the result, each appeal fails. Each appeal is hereby dismissed.

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